

## MINUTES - SPECIAL CALLED MEETING – POST COMMISSION

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The Tennessee Peace Officer Standards and Training Commission met in a special called meeting on Friday, January 30, 2014, at 10:00 a.m., at the Tennessee Law Enforcement Training Academy, 3025 Lebanon Road, Nashville, Tennessee.

### POST MEMBERS PRESENT

Commissioner Rita Baker  
Commissioner Dave Bennett  
Commissioner Glenn Chrisman, Chairman  
Commissioner Glen Donoho  
Commissioner Jerry Fanion  
Commissioner Frank Lax  
Commissioner Jeff Long  
Commissioner Kim Wallace  
Commissioner Bobby Williamson  
Commissioner Ric Wilson  
General Brent Cherry

### POST STAFF PRESENT

Mr. Brian Grisham, Executive Secretary  
Ms. Gay Rye, Admin. Services Assistant  
Mr. Johnny Welch, POST Investigator  
Mr. Stan Murphy, POST Investigator  
Mr. Joseph Underwood, Attorney, Commerce & Insurance

Chairman Chrisman called the meeting to order and welcomed everyone to the meeting. The chairman recognized new member Sheriff Jeff Long of Williamson County and welcomed him to the POST Commission.

The meeting was called to consider the request of Neil Edward Radar of Cocke County. Chairman Chrisman recognized Mr. Radar and asked him to proceed.

Mr. Radar thanked the commissioners for hearing his request. He passed notebooks to the commissioners which contained his qualifications and experience which form the basis for him to run for sheriff of Cocke County. Mr. Radar told the commission he has three years of law enforcement experience in the last ten years and has worked as a security forces officer in the Air Force and so, by definition, he was a federal law enforcement officer. Mr. Radar gave a synopsis of his educational training. He added that he is also formally trained in law enforcement in that he has attended four separate law enforcement schools, which included the Army MP School, TLETA in 1976 and was certified as a police officer in Tennessee. He then took a leave of absence from law enforcement and went to work for TVA and went through their public safety academy in 1979. He entered the Air Force in 1981 and went through the basic security police officers course. He has completed numerous specialized courses since the basic. Mr. Radar noted the notebook contains eight certificates that outline some of the courses he has taken.

Mr. Radar commented that he has over thirty-seven years of combined experience which includes three

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years of Army MP, four years at Newport, TN police department, and thirty years with the Air Force as an Air Force security police officer. Mr. Radar explained that from 2004-2006, he served as the deputy director of the Joint Security Division at Headquarter Central Command. From 2005 to 2006, he was chief of the Enforcement Division. He was a fully qualified security forces officer. Mr. Radar noted there are a lot of law enforcement duties as a security forces officer. He added that in terrorism training, they are doing crime prevention in preventing terrorism attacks which is crime prevention by another means. In doing this type work, you are reacting to intelligence, and most major police departments have intelligence divisions.

Mr. Radar explained that from 2006 to 2009, he was chief of United States security forces in Europe and was responsible for providing guidance, policy and for programming for security forces manpower, facilities and equipment for over 3,300 security forces members that were spread out over Europe at different phases. From December of 2009 to December 2010, he served as the deputy director of operations, joint security for United States forces in Afghanistan.

Mr. Radar explained the different positions he has held and the duties involved. He provided excerpts from the Air Force training he was required to do every year. He explained some of this is done in the classroom, some is computer based, some is on-the-job training. Mr. Radar said this will exceed more than forty hours yearly. He added that in the military, he was required to attend firearms training at least once a year and, depending on the job, he may go twice a year and fire on his primary weapon and also on a secondary weapon. Mr. Radar added that any time his assignment was changed, he would receive training in that new unit, which in his case was every two or three years as he had nineteen moves in thirty years service.

Mr. Radar also supplied names of references and points of contact if anyone had questions concerning his training. He added he was not sure when the requirement was established to have three out of the last ten years law enforcement experience and did not know why it was changed. Mr. Radar said he believes the intent of the change was to insure that someone with no law enforcement experience and training would not be allowed to serve as sheriff in the state of Tennessee. Mr. Radar added that he recalls sitting in a training class and having a discussion concerning the spirit and intent of a law. He said he did not believe that this would exclude a military officer with training and experience such that he has. He asked the commission to consider his formal training and his experience as a law enforcement officer and as a formal law enforcement officer in the military. He added he believes that his experience and training meets the intent of the Tennessee code and asked the commission to consider that. Mr. Radar remarks that he knows the basics of law enforcement and knows how to lead and manage a law enforcement organization and has done that successfully in the Air Force. Mr. Radar asked the commission to consider the spirit and the intent and not the letter of the law when they decide on his qualifications.

Commissioner Lax moved to approve the qualifications of Mr. Radar, seconded by Gen. Cherry.

Chairman Chrisman called for further discussions or questions.

Mr. Grisham asked Mr. Radar to outline what his duties were that were tantamount to chief of police. Mr. Radar responded that he was responsible for approving the policy on law enforcement issues. The

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Air Force established a basic policy. Mr. Radar said he approved policy on use of force, on military working dog, among others. He would travel over Europe and meet with the local security forces commanders and assess how things were going with them, listen to their complaints. He would do this on a periodic basis. He would represent security forces to his bosses, whether that be in trying to get facilities equipment or programs that were needed or a policy issue that affected the security forces.

Mr. Welch remarked that in military, when a person becomes a chief of security, they are primarily a chief of police for that group or division or wing. A security chief in the Air Force is the same as a provost marshal. Mr. Radar's activities in the past ten years have been that of a chief of police. Mr. Welch said when he first looked at this, he had reservations. He added that Mr. Radar has performed the duties at the federal level as a police officer. Mr. Radar told the commission that he did not command the security forces personally. He said there is a command chain and the local personnel did not work in the command chain under him. They worked in the functional chain for him, therefore, he directed their policy and that type of thing. He could not take disciplinary action against them if they did something wrong. That fell under command authority. Mr. Radar added he did not want to mislead the POST Commission about his role. He would set policy and establish training and make sure funds were available to have equipment in order for the forces to do their job.

Commissioner Wilson asked Mr. Radar if he has been a POST certified police officer in the last ten years. Mr. Radar answered not POST certified. Commissioner Baker noted that the phrase in the law allows for "full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by POST." She said the question is would Mr. Radar's federal time in the Air Force count as certified law enforcement experience and then would his training be considered equivalent to that required by POST.

Commissioner Williamson said the commission has certified people who come out of military police positions. Mr. Welch added that they have approved after the people have completed the necessary training that is required. He said they do not allow individuals to step straight from the military into law enforcement. Mr. Radar noted that should he be elected sheriff, he would be attending some training courses and that would give him his POST certification in Tennessee. Mr. Grisham commented that there would be two different issues. If Mr. Radar is elected, they will have to address how he transitions back to POST certified status. They are discussing today the limited issue of POST certified or equivalent experience in the past ten years.

Mr. Underwood remarked the law says state or federal officer, which could include the military. He said the POST Commission can be as expansive and broad as they want in that regard. Mr. Grisham added that the language is unfortunate in that there is no one entity that certifies federal law enforcement officers. There is not a certification for FBI agents. The question is is the training equivalent, and the only way POST can read that is is the training equivalent to POST's training.

Commissioner Fanion remarked that in looking ahead, what would the training be if they get to that point. Mr. Grisham answered that, at the most, it would be the Commission's call, but it would be the transition school. Mr. Radar would have to do the new sheriff's school by statute. He added if the commission is going to be consistent with what they have required in the past, then Mr. Radar would attend transition school. Mr. Grisham said they could argue that Mr. Radar did not have a five-year

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break in service so he does not need transition school.

Commissioner Lax said the basis of his motion is for Mr. Radar to be able to run for sheriff, and the way he interprets what Commissioner Baker read is that Mr. Radar does have federal law enforcement experience under the statute. Whether he wins the election or not would be up to the electorate. At that time, the POST Commission would have to decide what classes Mr. Radar would need to take to serve as sheriff.

Mr. Welch explained that once Mr. Radar achieved a certain rank, there are schools that only the chosen few are selected for, such as War College, Staff and Command School at Leavenworth on the Army side. Mr. Welch said once a person begins to elevate in rank, it is much like a chief of police in that you get farther and farther away from the law enforcement side and more into the administrative side. That is where a lot of Mr. Radar's training lies. His position was still that of a chief of police but with a lot more administrative responsibilities. Mr. Radar responded that he did attend the Army War College.

Commissioner Baker asked Mr. Welch if he would consider Mr. Radar's training in the last ten years to be equivalent to that required of a chief of police in Tennessee. Mr. Welch answered that in this state, forty hours is the requirement for in-service; however, a progressive chief will not settle for forty hours. They will look for other schools to enhance their career. Mr. Welch said he believes the training Mr. Radar has qualifies him under the statute.

Chairman Chrisman called for further questions or further discussion. There being none, the motion to approve carried.

Chairman Chrisman noted the next item on the agenda is discussion of a settlement offer regarding POST versus Robert E. Cummings. He recognized Mr. Underwood and turned the floor over to him.

Mr. Underwood informed the commission that currently this matter is set for a formal hearing in February. He said there has been a recommendation for a settlement offer with the respondent's counsel. This matter began June 15, 2010 when Officer Cummings was terminated by the UT Knoxville PD after an internal investigation regarding a policy violation. A change of status was sent to POST. Soon after, there was a request for decertification by the former employing agency. That was received in December, 2010. At that time, policy had changed, and the matter was re-presented in 2013 to the commission. The subcommittee heard the matter and recommended a formal hearing, which is scheduled later in February.

Mr. Underwood said the difficulty that legal counsel has encountered is that anyone who had knowledge of this matter is not stepping forward to support any allegations toward decertification. The former chief who recommended decertification is no longer with the agency. The officer who did the internal investigation is no longer with that agency. The new chief feels he is not able to dismiss it and is leaving it up to the POST Commission if they would like to go forward.

Mr. Underwood noted that the problem with a lot of the allegations is that there was another nearby agency whose officers were also included in the policy violations. No criminal charges were known to

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develop. That agency terminated their officers and sent the information to UT Knoxville, who then terminated their officer. The officers from the other agency have not been requested for decertification. They were terminated and some were allowed to resign. Mr. Cummings is now the only officer who is being considered for decertification. Mr. Underwood said there is an agreement to suspend Mr. Cummings' license from that day of termination until basically the beginning of February, 2014. There would be a three and a half year suspension on Mr. Cummings' record. He would then be able to go back to full status and he can seek employment, but it would be in his record about the suspension during that time for violation of policy.

Mr. Underwood said there is difficulty to have any firsthand knowledge of the allegations. The respondent would have to admit to the POST Commission that he did the things wrong that he is accused of doing. The policy of the commission has been decertification when people resign in lieu of termination or termination for policy matters. Mr. Underwood said there could have possibly been criminal charges filed but there were not. There was a federal agency involved that decided no charges would be brought against the officers. Mr. Underwood said it is a situation where there is not a lot of evidence to present unless the respondent admits that he did things wrong.

Chairman Chrisman clarified that if the settlement order was agreed to, there would be documentation in Mr. Cummings' file that would say he had a three and a half year suspension. Mr. Underwood affirmed, and added if Mr. Cummings were ever rehired, he would have to catch up on his 40 hours of in-service per year. Mr. Underwood said the settlement offer basically acknowledges that Mr. Cummings was terminated for cause of policy by his agency, that he was suspended for three and a half years, and that the hearing will not go forward. The allegations were not proven to be fact. The allegations that lead to his termination are still allegations at this point. Any department who wants to employ Mr. Cummings can still contact his former agency. That department will need to do their due diligence. If Mr. Cummings were suspended for five years or longer, he would have to attend transition school. He will not have to do that with the three and a half years suspension, but he will have to do his in-service to keep his certification. He has missed his in-service since he has not been employed with an agency.

Commissioner Baker noted the bottom line is they have no charges and no one is willing to put on proof. Mr. Underwood said it is a situation that if there were a formal hearing, he would ask for a dismissal because there would be no evidence presented to support the allegations.

Commissioner Williamson asked how Mr. Cummings would be made whole after the time period of the suspension. Mr. Underwood answered that when the three years have run, the suspension is over. He can be hired now and would have to attend in-service. However, the clock is still running on Mr. Cummings' time and if he is unemployed for five years, he would have to attend transition school. The suspension would begin the day after Mr. Cummings' termination until the beginning of next month. Mr. Underwood said he feels the subcommittee was valid in recommending this for a formal hearing, but once it gets down to the formal hearing, there is no one to verify the facts because those people have moved on and the new chief has no knowledge of the facts. A lot of the information came from another agency who was not the employer of this individual and chose not to take the same action with their own employees.

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Chairman Chrisman asked if Legal is recommending that this be the settlement. Mr. Underwood said this is the recommendation to accept the settlement offer. If the commission decides not to accept the offer, then they will move forward with a formal hearing, although he feels their hands would be tied.

Commissioner Fanion moved to accept legal counsel's recommendation and settle the issue.

Commissioner Baker seconded the motion. There being no further discussion, the motion carried.

In further business Mr. Grisham said in looking at the qualifying deadline for sheriff, there is a possibility they will need to meet in order to ascertain whether an individual qualifies under the three years experience within the past ten years. He asked if members could be present on the 20<sup>th</sup> at two o'clock to consider this request. There is a Decertification Subcommittee meeting set on Thursday, February 20<sup>th</sup> at 1:00 p.m. There will need to be an additional five people to be present thereafter to consider the qualifications of any other individual who wishes to appear. Mr. Grisham said those names have to be certified on the 20<sup>th</sup> to the Election Commission.

Chairman Chrisman asked for any other business. There being none, Commissioner Rhoades moved to adjourn, seconded by Commissioner Fanion. The motion carried.

The meeting adjourned.

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RESPECTFULLY SUBMITTED

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Patsy Norman  
LCR #410  
State of Tennessee

APPROVED: \_\_\_\_\_  
GLENN CHRISMAN  
Chairman

DATE: \_\_\_\_\_